



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



March 30, 2016

The Honorable Sharon Carson, Chair
Senate Executive Departments and Administration Committee
Legislative Office Building, Room 101
Concord, NH 03301

RE: HB 1245-FN, An act relative to petitions for adoption of rules under the administrative procedures act and incorporation of documents by reference.

Dear Senator Carson and Members of the Committee:

Thank you for the opportunity to comment on HB 1245-FN.¹ This bill would amend NH RSA 541-A, the Administrative Procedure Act, by extending the time in which a board, commission, or group receiving a rulemaking petition must respond to 30 days after the next scheduled meeting of the body, and by allowing the incorporation by reference of material from a group or association of which the agency is a member. The New Hampshire Department of Environmental Services (NHDES) supports this bill.

Presently, RSA 541-A:4, I, requires any agency to respond to a petition to adopt, amend, or repeal a rule within 30 days of receiving the petition. RSA 541-A:1 II defines "agency" as "each state board, commission, department, institution, officer, or any other state official or group, other than the legislature or the courts, authorized by law to make rules or to determine contested cases." Based on this definition, a body such as one of the Environmental Councils that hears appeals of NHDES decisions is obligated by statute to respond to a petition within 30 days. Depending on when the petition is received, this could mean calling a special meeting solely to consider the petition -- and assumes that the group could find a date on which a quorum of its members could convene. Allowing 30 days after the next regular meeting of the group would mean that the members would not have to disrupt their regular schedules to consider the petition, which would be more efficient and cost effective.

Regarding incorporation by reference, current law at RSA 541-A:12, III, limits an agency to incorporating documents by reference that are "prepared by an unrelated third party" and specifically prohibits an agency from incorporating by reference "any document or Internet content prepared by or on behalf of the agency." The NHDES fully appreciates the logic behind this requirement. However, the NHDES participates in many regional and national groups, and there has always been some uncertainty as to whether documents prepared by such groups could be incorporated by reference. The NHDES

¹ The bill was amended by the House of Representatives, but the amendment affects only one agency and does not affect the NHDES's support of the bill.

believes the proposed language appropriately recognizes that being a member of a group limits the influence and control exerted by any single member, such that an agency is not simply trying to avoid rulemaking by incorporating by reference a document prepared by the group.

Thank you for your consideration in this matter. If you have questions or need additional information, please contact me at 271-2958 or Gretchen Hamel of my office at 271-3137 or Gretchen.Hamel@des.nh.gov.

Respectfully Submitted,



Thomas S. Burack
Commissioner

cc: Sponsors of HB 1245: Rep. C. McGuire; Sen. Reagan